STATE OF MICHIGAN

COURT OF APPEALS

HIKMAT KALLABAT and MR. K'S RESTAURANT, INC.,

Plaintiffs-Appellants,

and

BELLE POINTE DEVELOPMENT CORPORATION,

Plaintiff-Appellee

v

WARREN R. HAMILL,

Defendant,

and

AMOS KNOLL, d/b/a SERVICE FINANCIAL HOLDING COMPANY, LTD, and d/b/a COAST TO COAST DEVELOPMENT CORPORATION,

Defendant-Appellee.

UNPUBLISHED
October 4, 2005

No. 254112
Wayne Circuit Court
LC No. 01-131543-CH

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiffs Hikmat Kallabat and Mr. K Restaurant, Inc. (Mr. K) appeal by right from an order granting plaintiff Belle Pointe Development Corporation's (Belle Pointe) motion for entry of a judgment on an arbitration award. We affirm.

The instant case began when Kallabat, Mr. K, and Belle Pointe filed suit alleging that defendants Knoll and Hamill committed fraud in obtaining a mortgage on a piece of real property owned by the plaintiffs. Mr. K has its primary place of business on the property in question. On January 17, 2002, the parties reached a settlement in which they agreed to release all claims outside the provisions of the settlement agreement.

The terms of the settlement agreement stated as follows: Fay Knoll, the wife of defendant Knoll, and Nazhat Kallabat, the sister of plaintiff Kallabat, will each own a fifty percent interest in Belle Pointe. Knoll will remain as president of the corporation, and Kallabat will act as its treasurer and secretary. The parties will obtain a court order quieting title to the property in question in the name of Belle Pointe, free of any claims except for Hamill's mortgage and back taxes. Belle Pointe will convey the property to Slavic Group, L.L.C. (Slavic Group), a company controlled by Fay Knoll. Slavic Group will then obtain a new mortgage, pay taxes and the mortgage Hamill held, and convey the property back to Belle Pointe. Belle Pointe will then sell the property, pay off the mortgage, and split the remaining proceeds between its two owners. If Belle Pointe receives a good faith offer of less than $850,000, Knoll and Kallabat must approve the offer. If either refuses to give his approval, the parties would immediately submit to binding arbitration.

On January 30, 2002, the trial court issued a consent order quieting title and dismissing claims with prejudice, which incorporated all of the provisions of the settlement. The trial court retained jurisdiction to enforce the order.

Slavic Group made an offer to purchase the property for $641,800, and Kallabat refused to give his consent. The issue went to arbitration, and the arbitrator ruled that Belle Pointe should accept the offer. On November 13, 2003, following a motion by Belle Pointe, the trial court entered an order confirming the arbitration award. This appeal followed.

Appellants contend that the judgment affirming the arbitration award must be set aside because they did not receive reasonable and timely notice of its entry in violation of the principles of procedural due process. Specifically, Kallabat and Mr. K argue that Belle Pointe did not serve its motion for entry of judgment in compliance with the time requirements set forth in MCR 2.119(C)(1). Further, appellants assert that Belle Pointe failed to provide them with meaningful notice because the motion did not indicate that the hearing would conclude the litigation and terminate appellants' rights under the settlement agreement. Appellants also claim that the judgment deprived them of substantial rights because it terminated the trial court's jurisdiction over the case only sixteen days following the arbitrator's award. Appellants argue they were denied the opportunity to file a likely successful petition to set aside the award.

We review de novo a trial court's decision to enforce, vacate or modify an arbitration award. *Tokar v Albery*, 258 Mich App 350, 352; 671 NW2d 139 (2003). Similarly, we review de novo the legal question of whether a party received sufficient notice to satisfy due process. See *Vicencio v Ramirez*, 211 Mich App 501, 503-504; 536 NW2d 280 (1995).

Under MCR 2.119(C)(1)(a), a written motion, notice of the hearing on the motion, and any supporting brief or affidavits must be served on the opposing party "at least 9 days before the time set for the hearing, if served by mail." If served by delivery under MCR 2.107(C)(1) or (2), the time limit becomes seven days. MCR 2.119(C)(1)(b). A proof of service must be filed with the court at or before the time of the hearing to which it relates. MCR 2.107(D).

Here, Belle Point served a notice stating that a hearing on its motion would take place on November 14, 2003. It filed a proof of service stating that the notice had been served on appellants by both facsimile and regular mail on November 6, 2003. But on November 7, 2003,

Belle Pointe served a second notice on appellants by these same methods. The second notice stated that the date of the hearing had changed to November 13, 2003. Belle Pointe failed to file its proof of service for the second notice until the day after the hearing took place.[1]

Although by serving notice through the mail only six days before the hearing failed to comply with the requirements of MCR 2.119(C)(1)(a), Belle Pointe did not deprive appellants of their right to due process. Due process is satisfied when interested parties are given notice through a method that is reasonably calculated, under the circumstances, to apprise them of proceedings that may directly and adversely affect their legally protected interests and afford them an opportunity to respond. *Vicencio, supra* at 504. Here, Belle Pointe sent notice of the hearing to appellants' attorneys by facsimile on the same day the notices were mailed. Although appellants did not appear at the hearing, they do not contend that they did not actually receive the facsimiles. While such service did not satisfy the requirements of the court rule, it provided notice that was reasonably calculated to apprise appellants of the hearing and afford them an opportunity to respond.

Appellants' claim that they did not have meaningful notice that the trial court would enter an order concluding the litigation also lacks merit. Contrary to appellants' argument, they did not give up their claims against Knoll or lose title to the property and control of Belle Pointe because of the order. Rather, the settlement entered by appellants that the trial court incorporated into its order released all claims outside its provisions, quieted title to the property in favor of Belle Pointe, and split ownership of that corporation between Knoll's wife and Kallabat's sister. Although the trial court retained jurisdiction to enforce its order, the only action called for by the settlement that had not occurred by the time of the hearing was the sale of the property. Because the binding arbitration award called for Belle Point to accept an offer to purchase the property, there were no issues left to be resolved. Appellants, being parties to the settlement agreement, should have known that the trial court would enter a final order when confirming the arbitration award.

Appellants' remaining claims of error do not require reversal of the trial court's order. MCR 2.613(A) provides that an error in a ruling or order in a civil case does not provide grounds "for vacating, modifying, or otherwise disturbing a judgment or order, unless refusal to take this action appears to the court inconsistent with substantial justice." See *Chastain v General Motors Corp*, 467 Mich 888; 654 NW2d 326 (2002).

The fact that Belle Pointe failed to serve notice on appellants as required by MCR 2.119(C)(1)(a) did not alter the outcome of the hearing. As the trial court noted when denying appellants' motion for reconsideration, the arbitrator's decision was binding on the parties to the settlement agreement. Even if proper notice had been served and appellants appeared to oppose

[1] The reason for the change of dates is not apparent from the record, but Belle Pointe's attorney indicated that it was done at the trial court's request. We note that even if the date had not changed, Belle Pointe's original notice failed to comply with the time requirements of MCR 2.119(C)(1).

the motion, the trial court would have entered a judgment confirming the award. Consequently, we find that no substantial injustice occurred and decline to set aside the trial court's judgment.

Similarly, the fact that the trial court entered the judgment only 16 days after the arbitrator issued the award does not provide grounds for reversal. Under MCR 3.602(J)(2), a party wishing to vacate an arbitration award must file an application to do so within 21 days of the time it received a copy of the award. But MCR 3.602(I) states as follows:

> An arbitration award filed with the clerk of the court designated in the agreement or statute within one year after the award was rendered may be confirmed by the court, unless it is vacated, corrected, or modified, or a decision is postponed, as provided in this rule.

MCR 3.602(I) merely states that a court may confirm an award within one year of when it is filed. Although a party contesting an award must apply to vacate it within 21 days, the rules contain no requirement that the court wait until 21 days have passed to confirm an award. Thus, the trial court did not err in entering judgment on the arbitration award.

We affirm.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey